

The record considered by the Appeals Board is the same as that listed in the Award of the Administrative Law Judge dated December 9, 1993.

### **STIPULATIONS**

The Appeals Board hereby adopts those stipulations set forth in the Award of the Administrative Law Judge dated December 9, 1993.

### **ISSUES**

The issues addressed in this review are:

- (1) Whether claimant's injury resulted in a scheduled injury or general bodily disability.
- (2) Whether claimant has suffered post-traumatic stress disorder as a result of the work-related accident.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire record, the Appeals Board makes the following findings of fact and conclusions of law:

- (1) On March 13, 1989, claimant was injured when he fell off a fourteen-foot step ladder, shattering bones in his left heel and injuring his ankle. As a result of the injury to the left lower extremity, claimant has also experienced impairment to his back for which he is entitled to permanent partial general disability benefits under the provisions of K.S.A. 44-510e.

As a result of his work-related injuries, claimant has undergone a total of seven surgeries to his left lower extremity, including removal of hardware and a triple arthrodesis. Although the record is not entirely clear as to when claimant's back complaints began, claimant did undergo a CT scan of his back in April 1990. Apparently the physician examining claimant for his back complaints at that time did not wish to embark upon a course of treatment until the ankle and foot conditions were stabilized.

Claimant was evaluated by board-certified orthopedist Robert L. Eyster, M.D., for a second opinion pertaining to ankle surgery on December 4, 1989. Dr. Eyster's records do not indicate that claimant told him of back complaints at that time. However, claimant saw Dr. Eyster a second time on July 14, 1993, and advised the doctor of back complaints at that visit. Dr. Eyster attributed the back complaints to de-conditioning and did not feel that claimant had any impairment to his lumbar spine. Dr. Eyster, however, found a loss of motion of the hips and back, and thought that claimant could regain this loss of motion with therapy. Dr. Eyster admitted that claimant's altered gait caused by the left leg injury was a contributing factor to claimant's back problem, and further admitted that the altered gait could not be eliminated. Dr. Eyster ordered a functional capacities assessment which concluded that the claimant had the capability of performing light-duty work and tended to confirm the existence of an impairment to the back. Dr. Eyster acknowledges that some people develop back problems due to altered gait and that it may cause a muscular strain irritation. Dr. Eyster believes that claimant's complaints of pain and irritation in the back are valid. Although Dr. Eyster would not place permanent restrictions and limitations upon claimant, he would recommend that claimant limit his activities due to his back.

The claimant was referred to Ernest R. Schlachter, M.D., a general medical practitioner, by the claimant's attorney for evaluation on May 28, 1993. Dr. Schlachter devotes thirty to thirty-five percent of his practice to conservative orthopedic care of his patients and has conducted numerous physical examinations as a company physician. In the past, Dr. Schlachter has been appointed to perform independent medical examinations in workers compensation cases for the administrative law judges located in Wichita. In his physical examination, Dr. Schlachter found that claimant had tenderness to palpation in the low back with muscle spasm, limited extension from flexion with pain, limited ability to bend forward due to back pain, limited range of motion in the back, absence of the left achilles tendon reflex, marked weakness in all muscle groups of the left lower extremity, negative straight leg raising test, no sensory deficits, atrophy in the left thigh and calf, unsteady gait and limp, and lack of sensation to the bottom of the left foot. Dr. Schlachter diagnosed claimant as having chronic lumbosacral strain secondary to altered gait, arthrodesis of the left ankle with weakness of the left lower extremity, and peripheral neuropathy of the left foot. Dr. Schlachter attributes claimant's back problems to his altered gait and limp which causes his back to sway placing a strain on the back. Using the AMA Guides and his thirty years of experience, Dr. Schlachter rated the claimant as having a five percent (5%) permanent impairment of function to his lumbar spine as a result of the altered gait. Dr. Schlachter believes that claimant should observe permanent restrictions of no stair climbing, no kneeling or squatting, no repetitive bending or twisting, no repetitive lifting greater than twenty pounds, no single lifts greater than thirty pounds, no carrying more than five pounds, and no walking greater than one-half mile in eight hours. Dr. Schlachter recommends the claimant have a job where he can sit part-time and stand part-time.

Based upon the above, the Appeals Board finds that claimant has experienced personal injury by accident arising out of and in the course of his employment with the respondent for which he is entitled to permanent partial general disability benefits, as a non-scheduled injury pursuant to K.S.A. 44-510e.

(2) Based upon the evidence presented, the Appeals Board is unable to find that claimant has experienced psychological injury or problems that would be compensable in this proceeding.

Neurosis and neurotic or anxiety disorders, as well as other psychiatric problems, may be due to many causes other than trauma, and there are a number of predisposing factors which are not related to injury or trauma. In Berger v. Hahner, Foreman & Cale, Inc., 211 Kan. 541, 506 P.2d 1175 (1973), the Kansas Supreme Court at page 550 of the opinion states:

"Even though this court has long held that traumatic neurosis is compensable; we are fully aware that great care should be exercised in granting an award for such injury owing to the nebulous characteristics of a neurosis. An employee who predicates a claim for temporary or permanent disability upon neurosis induced by trauma, either scheduled or otherwise, bears the burden of proving by a preponderance of the evidence that the neurosis exists *and that it was caused by an accident arising out of and during the course of his employment.*" (Emphasis added.)

The Appeals Board finds that the evidence presented regarding psychological injury and problems fails to satisfy the burden of proof required in this situation. Generally, expert opinion from a psychologist, psychiatrist, or other appropriate health care provider is required to establish the necessary elements of causation.

(3) The Appeals Board hereby adopts the findings of Administrative Law Judge Shannon S. Krysl as set forth in her Award of December 9, 1993, that are not inconsistent with the findings and conclusions specifically set forth herein.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the award of compensation set forth by Administrative Law Judge Shannon S. Krysl in her Award of December 9, 1993, should be, and hereby is, affirmed in all respects. The remaining orders of the Administrative Law Judge as contained in her Award of December 9, 1993, are adopted by the Appeals Board and incorporated herein by reference as if fully set forth.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April, 1994.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

cc: Chris A. Clements, 1861 N. Rock Road, #320, Wichita, KS 67206  
Larry Shoaf, 300 W. Douglas, Suite 530, Wichita, KS 67202  
Shannon S. Krysl, Administrative Law Judge  
George Gomez, Director